OSTERResearching Services

12897 Colonial Dr • Mt Airy, Md 21771 301-253-6040

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OCT 11 1989 -10 05 AM

INTERSTATE COMMERCE COMMISSION

INICHAMINA COMM

9-284A001

October 11, 1989

Ms. Mildred Lee Recordations Unit Interstate Commerce Commission 12th & Constitution Avenue, N.W. Washington, D.C. 20423

Dear Ms. Lee:

Enclosed is a Locomotive Lease Agreement dated September 25, 1989, between the following parties:

Lessor: Helm Financial Corporation
One Embarcadero Center

San Francisco, CA 94111

Lessee: Massachusetts Central Railroad Corporation

One Wilbraham Street Palmer, MA 01069

The equipment involved in this transaction is as follows:

Equipment: 1, GP-7 Locomotive ATSF 2069

Please record this agreement as a primary document. The filing fee of \$15 is enclosed. Thank you.

Sincerely,

Mary a Outer

Mary Ann Oster Research Consultant

Enclosure

May a Coth

Interstate Commerce Commission Washington, D.C. 20423

10/11/89

OFFICE OF THE SECRETARY

Mary Ann Oster Oster Researching Services 12897 Colonial Dr. Mt. Airy, MD. 21771

> Sir: Dear

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 10/11/89 at 10:05 am and assigned recordation number(s). 16563

Sincerely yours,

Noreta R. McGee

Secretary

Enclosure(s)

16563

RECORDATION NO ______ FILED 1415

OCT 11 1989 -10 05 AM

INTERSTATE COMMERCE COMMISSION

LOCOMOTIVE LEASE AGREEMENT

BETWEEN

HELM FINANCIAL CORPORATION (LESSOR)

AND

MASSACHUSETTS CENTRAL RAILROAD CORPORATION (LESSEE)

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RAILCAR LEASE AGREEMENT

THIS AGREEMENT, made and entered into as of this 25 day of September, 1989 (hereinafter the "Effective Date") by and between HELM FINANCIAL CORPORATION, a California corporation, hereinafter called "Lessor", and MASSACHUSETTS CENTRAL RAILROAD CORPORATION, a Massachusetts corporation hereinafter called "Lessee".

1. Equipment and Lease Charges. Lessee agrees to lease with intent to purchase from Lessor one (1) GP7 diesel electric locomotive numbered ATSF 2069 (hereinafter "the Locomotive"), together with all replacement parts, additions, repairs and accessories incorporated therein and/or affixed thereto.

a. Rental

Rent shall become effective as of the Effective Date, and shall continue in effect, until returned to Lessor at the end of the term of this Agreement, as hereafter provided in Article 5. Payment of rent shall be made to Lessor at the address specified in Article 14, or to such other place as Lessor may direct. The first rental payment shall be in the amount of \$15,000.00, payable on the Effective Date. The second rental payment and the next eleven (11) consecutive rental payments in the amount of \$5,331.00 per month shall be due on the last day of each month beginning on September 30, 1989. Any costs incurred by Lessor in collecting rent wrongfully withheld by Lessee, including reasonable attorney fees, will be paid by Lessee.

b. Rental Set-Off

Lessee shall not be entitled to any abatement of rent, reduction thereof or set-off, counterclaim, recoupment or defense against rent or any other amount payable hereunder for any reason whatsoever, including, but not limited to, abatements, reductions, set-offs, counterclaims, recoupments or defenses due or alleged to be due by reason of any past, present or future claims of Lessee against Lessor or any other person for any reason whatsoever, except as otherwise provided in Articles 1, 4, 6, and 9 herein; nor shall this Agreement terminate or the obligations of Lessee be otherwise affected by reason of any defect in the condition, design, operation or fitness for use of the Locomotive or damage to or loss of possession or loss of use or destruction of the Locomotive from whatever cause and of whatever duration, except as otherwise provided in Article 4 below, or the prohibition of or other restriction against Lessee's use of the Locomotive, or the interference with such use by any person or entity or

the invalidity or unenforceability or lack of due authorization of this Agreement or any insolvency of or the bankruptcy, reorganization or similar proceeding against Lessee.

Lessor covenants that so long as Lessee is not in default hereunder, Lessee shall have and enjoy an unconditional right quietly to enjoy and use the Locomotive free from any disturbance or interruption of possession arising as a result of any action or inaction, failure of title, or conduct of or by Lessor, or of or by any assignee of its rights hereunder.

- 2. <u>Delivery of Locomotive</u>. The Lessee hereby accepts the Locomotive and acknowledges that it is subject to all terms and conditions of this Lease.
- LESSOR LEASES THE LOCOMOTIVE AS IS AND MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND RESPECTING THE LOCOMOTIVE WHETHER STATUTORY, WRITTEN, ORAL OR IMPLIED AND LESSOR HAS NOT MADE AND DOES NOT HEREBY MAKE, NOR SHALL IT BE DEEMED BY VIRTUE OF HAVING LEASED THE LOCOMOTIVE PURSUANT TO THIS AGREEMENT TO HAVE MADE, ANY REPRESENTATION OR WARRANTY AS TO THE MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, DESIGN OR CONDITION OF, OR AS TO THE QUALITY OF THE WORKMANSHIP IN, THE LOCOMOTIVE, ALL OF WHICH ARE EXPRESSLY DISCLAIMED AND LESSOR SHALL NOT BE LIABLE, IN CONTRACT, TORT OR OTHERWISE ON ACCOUNT OF ANY DEFECT, WHETHER HIDDEN, LATENT OR OTHERWISE DISCOVERABLE OR NONDISCOVERABLE RESPECTING THE LOCOMOTIVE. LESSEE ACCORDINGLY AGREES NOT TO ASSERT ANY CLAIM WHATSOEVER AGAINST LESSOR BASED THEREON. LESSEE FURTHER AGREES, REGARDLESS OF CAUSE, NOT TO ASSERT ANY CLAIM WHATSOEVER AGAINST LESSOR FOR LOSS OF ANTICIPATORY PROFITS OR CONSEQUENTIAL DAMAGES.
- 4. Responsibility for Damage or Destruction of Locomotive. If the Locomotive is lost, stolen, destroyed, or damaged beyond economic repair (such occurrences to be hereinafter called "Casualty Occurrences") in the opinion of Lessee, Lessee shall notify Lessor of such Casualty Occurrence within five (5) business days. On the next scheduled rental payment date after advising Lessor of such Casualty Occurrence, Lessee shall pay Lessor a settlement value for the Locomotive as described in the Casualty Schedule attached hereto as Exhibit A. Rent with respect to the Locomotive shall abate upon the date Lessor is paid for such Casualty Occurrence.

Upon payment by Lessee to Lessor of the settlement value of the Locomotive as hereinabove provided, so long as Lessee is not in default hereunder, the Locomotive shall become the property of the Lessee.

In order to facilitate the sale or other disposition of the Locomotive if it becomes Lessee's property as hereinbefore provided, Lessor shall, upon request of Lessee, execute and deliver to Lessee

or to Lessee's vendee, assignee or nominee, a bill of sale for the Locomotive, warranting title free and clear of all liens, security interest, and other encumbrances (except such as may have arisen by through or under Lessee during the term of this Agreement) and such other documents as may be required to release the Locomotive from the terms and scope of this Agreement and from any other lien or encumbrance of Lessor's making, undertaking or sufference, in such forms as may be reasonably required by the Lessee.

- Return of Locomotive. Except as provided in Section 13 and 22 hereof, at the expiration or termination of this Agreement, Lessee will surrender possession of the Locomotive, to Lessor by delivering the same to Lessor on the track of Lessee as designated by Lessor, at the sole expense and risk of Lessee. If the Locomotive is not on the railroad line of Lessee upon termination, cost or remarking, assembling, delivering, storing transporting of the Locomotive to Lessee's railroad line or line of a subsequent lessee shall be borne by Lessee. If the Locomotive is on the railroad line of Lessee upon expiration or termination or is subsequently returned to Lessee's railroad line, Lessee shall at Lessee's expense and designation within five (5) working days from notification by Lessor remove Lessee's railroad markings from the Locomotive and place thereon such marking as may be 'designated by Lessor, at the cost and expense of Lessee. After the removal and replacement of markings, Lessee shall deliver the Locomotive to a connecting carrier for shipment. Lessee shall provide up to one hundred twenty (120) days free storage on its railroad tracks for Lessor of the Locomotive.
- Compliance with Laws and Rules; Maintenance. The Lessee agrees, for the benefit of the Lessor, to comply in all respects with all laws of the jurisdictions in which operations involving the Locomotive subject to this Lease may extend, with the interchange rules of the Association of American Railroads and with all rules of the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Locomotive, to the extent such laws and rules affect the operations or use of the Locomotive; and in the event such laws or rules require the alteration or repairs of the Locomotive, the Lessee will conform therewith, and will maintain the same in proper condition or operation under such laws and rules; provided, however, that the Lessee may, in good faith contest the validity or application of any such law or rule in any reasonable manner which does not, in the reasonable opinion of the Lessor, adversely affect the property rights of the Lessor hereunder.

Lessee shall at all times during the term of this Lease at its own cost and expense, cause the Locomotive to be maintained, serviced and repaired so as to keep it in as good operating condition, working order, and repair as it was when it first became subject to this Lease, ordinary wear and tear excepted.

Neither party to this Lease will alter materially the physical structure or allow any third party to alter materially the physical structure of the Locomotive without the other party's written consent.

Any and all additions to the Locomotive and any replacements thereto and of parts thereof made by the Lessee shall constitute accessions to the Locomotive and, without cost or expense to the Lessor, there shall be immediately vested in the Lessor the same interest therein as the interests of the Lessor in the Locomotive.

- 7. Freight and Other Charges. Lessor shall not be obligated for the payment of any switching, freight, or other charges incurred by the movement or the holding of the Locomotive.
- 8. <u>Lettering of Locomotive</u>. Lessee agrees to keep and maintain on the sides of the Locomotive in letters not less than on-half inch in height the words "OWNERSHIP SUBJECT TO A SECURITY AGREEMENT FILED WITH THE INTERSTATE COMMERCE COMMISSION" or any other ownership stencil that currently appears on the Locomotive.
- 9. Responsibility for Taxes. Lessee will be liable for all taxes, costs, fines and assessments of every kind upon the Locomotive, and will file all reports relating thereto; provided, however, that Lessee shall not be responsible for federal or state taxes based upon the income of Lessor.
- 10. Recordkeeping; Inspection. Lessee agrees to keep and maintain and make available to Lessor such records of Lessee's use, operation, inspection, repairs and maintenance of the Locomotive while in its possession as shall be reasonably required by Lessor. Lessor, with one (1) day's written notice by such agent or agents as it may designate, shall have the right at all reasonable times to go upon the property of Lessee to inspect the Locomotive while in the possession of Lessee.
- 11. <u>Indemnification</u>. Lessee agrees to indemnify and hold Lessor harmless from any and all claims, demands, causes of action, cost, and expenses, including attorney fees, arising directly or indirectly out of the use, custody, control, or operation of the Locomotive, whether in contract, tort, strict liability in tort or otherwise. In any personal injury action(s) arising from the operation of said Locomotive naming Lessor as a defendant, Lessee agrees, if Lessor so requests, to undertake the defense and cost associated therewith immediately upon tender of said defense, including payment of any judgement directed against Lessor jointly or severally. Lessee also agrees to pay and indemnify Lessor from any and all penalties, fines, and levies arising from the operation of said Locomotive under this Agreement. Lessee's obligations hereunder shall survive the termination of this Agreement.

12. Assignment. Lessee shall be entitled to the possession and use of the Locomotive in accordance with the terms of this Agreement. Except as herein provided, Lessee will not assign, transfer, encumber or otherwise dispose of this lease, the Locomotive or any part thereof, or sublet the Locomotive without the prior written consent of Lessor. Lessee will not permit or suffer any encumbrances or liens to be entered or levied upon the Locomotive, other than such as may arise by, through, or under Lessor or any assignee of Lessor's rights hereunder.

Lessee acknowledges and understands that Lessor may, without notice to Lessee, assign its interest under this Agreement in and to the Locomotive to a bank or other lending institution as security for one or more loans. Lessee agrees, in the event of any such assignment and upon notice thereof from Lessor, and only in the event of such assignment to one or more such assignees: (i) to recognize such assignments; (ii) to make all payments of Rent and other amounts due under the Agreement as so assigned directly to the assignee identified in such notice or to its designee; (iii) to accept the directions or demands of such assignee in place of those of the Lessor; (iv) to surrender the Locomotive to such assignee upon termination of this Agreement; (v) that, in the event of such assignment and except as otherwise provided in Articles 4, 5, 6, or 9, Lessee's obligations hereunder with respect to payment of Rent shall not be subject to any reduction, abatement, defense, set-off, counter-claim or recoupment for any reason whatsoever; (vi) except as otherwise provided in Articles $\bar{2}$, 4 (with respect to an event in which the Locomotive becomes Lessee's property), 5, 6, and Article 15, not to terminate this Agreement; <u>provided</u>, <u>however</u>, nothing contained in this Article 12 shall relieve Lessor from its obligations to Lessee hereunder, nor shall any assignee hereof be relieved of the obligation to release its interests in the Locomotive to facilitate Lessor's obligations contained in the second paragraph of Article 4 hereof. and Article 22

13. Remedies. If the Lessee, within five (5) business days after notice, fails to carry out and perform any of the obligations on its part to be performed under this Agreement, or if any proceedings shall be commenced by or against Lessee for any relief under any bankruptcy, or insolvency, law or any law relating to the relief of debtors, readjustment of indebtedness, or reorganization to the relief of debtors, and in any of said events, Lessor shall have all rights available to it at law or in equity, including without limitation the right immediately to declare all sums due and to become due hereunder immediately due and payable, to repossess the Locomotive, to remove the Locomotive from the Lessee's service, to terminate this Agreement, and recover any and all damages sustained as a result of Lessee's default. If Lessor shall terminate this Agreement pursuant to this Article 13, Lessee shall remain liable for all unpaid rent and other amounts due hereunder. The rights and remedies herein given to Lessor shall in no way limit its other rights and remedies given or provided by law or in equity.

14. Place of Payment of Rent. Lessee shall direct payment of the monthly rent to the following address:

Helm Financial Corporation
One Embarcadero Center, 35th Floor
San Francisco, CA 94111

- 15. <u>Term of Agreement</u>. This Agreement shall remain in full force until it shall have been terminated as provided herein. The term of this Agreement shall begin on the Effective Date and continue through September 30, 1990.
- 16. <u>Notice</u>. Any notice to be given under this Agreement shall be given by certified mail in the following manner:
 - (a) Notice from Lessor to Lessee shall be sent to:

Mr. W. Robert Bentley President - General Manager Massachusetts Central Railroad Corporation One Wilbraham Street Palmer, MA 01069

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(b) Notices from Lessee to Lessor shall be sent to:

Helm Financial Corporation
One Embarcadero Center, 35th Floor
San Francisco, CA 94111
ATTN: President

or to such other address as Lessor may from time to time indicate by written notice to Lessee.

17. <u>Insurance</u>.

- (a) All risk of loss of, damage to or destruction of the Locomotive shall at all times be on Lessee except for loss, damage or destruction resulting from a negligent act or omission of Lessor, its officers, employees, agents, representatives, assignees, and/or successors.
- (b) The Lessee shall maintain insurance on the Locomotive and any insurance policies provided by Lessee hereunder shall (i) be issued by insurance carriers of recognized responsibility, (ii) cover the interest of Lessee and Lessor and protect Lessee and Lessor in respect of risk arising out of the condition, maintenance, use, ownership and operation of the Locomotive, (iii) provide that the insurance carrier give at least thirty (30) days' prior notice to Lessor in the event of cancellation or material alteration in coverage, (iv) provide that in respect of the interest of the Lessor in such policies, the insurance shall not be invalidated by an

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action or inaction of Lessee and shall insure Lessor's interest as it appears regardless of any breach or violation by Lessee of any warranty, declaration or condition contained in such policies, and shall include a minimum of five million dollars = (\$5,000,000), for public liability which Lessor might incur by reason of the operation of the Locomotive. The policies shall also include coverage for property in an amount to cover the settlement value as defined in Article 4.

- 18. Execution. This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same contract. This Agreement may be signed in separate counterparts as long as each party hereto shall have signed at least one counterpart.
- 19. Governing Law. This Agreement shall be governed by the law of the state of California.
- 20. Amendments. There shall be no amendments to this Agreement without the written consent of the Lessor and Lessee.
- 21. <u>Late Charges</u>. Delinquent payments shall bear interest at the rate of 1.5% per month, if not prohibited by law, otherwise at the highest lawful contract rate.
- 22. <u>Purchase Option</u>. The Lessor shall extend to the Lessee -a, purchase -option on the Locomotive at the expiration of this Agreement in the amount of \$1.00 so long as the following conditions are met:
 - (a) Lessee is not in default under this Agreement.
- (b) The first rental payment and all the monthly rents paid to the Lessor shall have been made pursuant to Article 1 herein.
- 23. Upon exercising purchase option of locomotive by Lessee, Lessor shall deliver to Lessee a bill of sale for locomotive warranting title free and clear of all liens, security interest, and other encumbrances (except such as may have arisen by through or under Lessee during the term of this Agreement) and such other documents as may be required to release the Locomotive from the terms and scope of this Agreement and from any other lien or encumbrance of Lessor's making, undertaking or sufference, in such forms as may be reasonably required by the Lessee.

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IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed and delivered that day and year first above written.

HELM FINANCIAL CORPORATION
LESSOR ///////////////////////////////////
By: Julian Com Cu
Title: President
Date: 9/25/89
MASSACHUSETTS CENTRAL RAILROAD CORPORATION
LESSEE
By: W.R. Bentley
Title: <u>Prus.</u>
Date: 9/25/89
Article 1
Witnessed by: Marcha Trinethie
Notary Public
My Commission Expires: 41/12/93

STATE OF CALIFORNIA)
COUNTY OF SAN FRANCISCO)

On this 20 day of Chur, 1989, before me personally appeared Churcheto me personally known, who, being by me duly sworn, says that he is result of HELM FINANCIAL CORPORATION, that said instrument was signed and sealed on behalf of said corporation and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

My Commission Expires:

July 26, 1989

OFFICIAL SEAL
KAREN STAUDENMAIER
NOTARY PUBLIC - CALIFORNIA
SAN FRANCISCO COUNTY
My comm expires JUL 26, 1993

[Notarial Seal]

EXHIBIT A

CASUALTY SCHEDULE

Rental Payment Date	<u>Settlement Value</u>
September 30, 1989	\$64,000.00
October 31, 1989	58,667.00
November 30, 1989	53,333.00
December 31, 1989	48,000.00
January 31, 1990	42,667.00
February 28, 1990	37,333.00
March 31, 1990	32,000.00
April 30, 1990	. 26,667.00
May 31, 1990	21,333.00
June 30, 1990	16,000.00
July 31, 1990	10,667.00
August 31, 1990	5,333.00